

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

USA,)	
)	
Plaintiff,)	
vs.)	
)	
HORNE, DEWAN ANTHONY,)	CAUSE NO. IP05-0032-CR-01-H/F
)	
Defendant.)	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	CAUSE NO. IP 05-32-CR-1 H/F
v.)	
)	
DEWAN ANTHONY HORNE,)	
)	
Defendant.)	

ENTRY ON DEFENDANT'S MOTION TO SUPPRESS

Defendant Dewan A. Horne has moved to suppress oral and written statements he made to law enforcement officers on January 11, 2005 after he invoked his right to counsel during custodial interrogation. The court held an evidentiary hearing on April 22, 2005, and the parties have submitted post-hearing briefs. The evidence shows that immediately after his arrest, Horne was given *Miranda* warnings, agreed to waive his right to counsel and right to remain silent, and answered questions. See *Miranda v. Arizona*, 384 U.S. 436 (1966). After about 30 to 45 minutes of custodial interrogation, Horne told the agents that he did not want to say any more and that he wanted to talk to an attorney.

The evidence also shows that the law enforcement officers later initiated further interrogation of Horne without honoring his earlier request for an attorney before any further interrogation. The further interrogation did not take the form

of explicit questioning, but consisted of conversations initiated by agents to try to persuade Horne to make incriminating statements without consulting an attorney first. Those efforts were successful, but they violated *Miranda*. The government did not show that Horne himself initiated any further discussions after he first invoked his right to counsel. In its supplemental brief, therefore, the government has agreed that Horne's statements after those first 30 to 45 minutes must be suppressed in light of *Edwards v. Arizona*, 451 U.S. 477, 484-85 (1981) ("We further hold that an accused, * * * having expressed his desire to deal with the police only through counsel, is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police."), and *Killebrew v. Endicott*, 992 F.2d 660, 663 (7th Cir. 1993) ("the term 'interrogation' under *Miranda* refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect").

Accordingly, defendant Horne's motion to suppress is granted. The government may not offer as evidence in its case-in-chief any evidence of statements made by Horne on January 11, 2005 after he invoked his right to counsel after the initial 30 to 45 minutes of custodial interrogation.

So ordered.

Date: June 9, 2005

DAVID F. HAMILTON, JUDGE
United States District Court
Southern District of Indiana

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